Bell Telephone Laboratories, Inc. *and* Local 1060, Communications Workers of America, AFL–CIO. Case 22–CA–18434

May 31, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN AND TRUESDALE

Exceptions filed to the judge's decision in this case present the issue of whether the Respondent lawfully refused to furnish requested information to the Union.[1]

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The Respondent is a corporation engaged in the business of conducting scientific research in the telecommunications industry. At the time of the alleged unfair labor practices, the Respondent and the Communications Workers of America, with which the Charging Party is affiliated, were parties to a collective-bargaining agreement effective from May 28, 1989, to May 30, 1992,[2] covering a unit of the Respondent's nonsupervisory employees in various mechanical and plant service occupations.

In late December 1991, the Respondent refurbished and resurfaced a concrete floor in one of its buildings. This work was subcontracted and therefore was not performed by bargaining unit employees. On or about February 2, the Charging Party requested the following information from the Respondent: a copy of the contract, a description of the work done, the scope of the job, the cost of the contract, and copies of all correspondence with the contractor (including names and addresses).

In its February 6 letter in response to the information request, the Respondent claimed that unit employees did not have the necessary skills and expertise to perform the work and that information on subcontractors was periodically reviewed with the Union in accordance with the terms of article 24 (particularly 24.02(c))[3] of the collective-bargaining agreement and would not be provided on an ad hoc basis.

On or about March 23, the Charging Party filed a grievance pursuant to article 20[4] of the collective-bargaining agreement over the Respondent's refusal to furnish the requested information.[5] The Respondent denied the grievance, reiterating its position that the Union's request for information did not conform to the procedure set forth in article 24 of the collective-bargaining agreement.

The judge found that the Union had a reasonable basis for arguing that the subcontracted work was bargaining unit work and that article 24 would not constitute a waiver of the Union's right to subcontracting information in appropriate circumstances. The judge, however, concluded that ''[t]he ultimate question is whether the information sought was relevant to a potential grievance under Article 24.'' In his view, the answer to that question was in the negative. Thus, he dismissed the complaint. The judge reasoned that arti-

[1] On June 8, 1993, Administrative Law Judge Raymond P. Green issued the attached decision. The General Counsel filed exceptions and a supporting brief.

[2] All dates herein are in 1992 unless otherwise indicated.

[3] Art. 24.02 states:

a. In making decisions regarding contracting of work, it is management's objective to consider carefully the interests of both customers and employees along with all other considerations essential to the management of the business. Some of these considerations include but are not limited to law, regulations, changing industry structure, economic conditions, and business considerations.

b. Work traditionally performed by bargaining unit members in a work group will not be contracted out if the contracting out will currently and directly cause layoffs or part-timing of regular employees in the same work group which would have otherwise performed the work. ''Work group'' as used in this Article shall be deemed to refer to the group of employees normally treated as a unit for purposes of part-timing or layoff under Article 8.

c. From time to time, but no less frequently than every six months, the Bell Laboratories Director, Labor Relations Services and the Union International Representative will meet to review work which has been contracted out which, heretofore, was performed in a given locality by bargaining unit members. The focus of the meetings will be to afford the Union International Representative an opportunity to suggest ways in which Bell Laboratories could, in the future, use bargaining unit members in the same locality to perform the contracted out work at the same or lower total cost to Bell Laboratories and within the same completion time requirements. Where such methods are presented by the Union, Bell Laboratories will give them due consideration and will advise the Union of its determination. Where appropriate the Bell Laboratories Director, Labor Relations Services and the Union International Representative will mutually authorize the formation of local committees to examine the contracted work to suggest ways that the work could be performed, in the future, by bargaining unit members in a given locality at the same or lower costs and within the same completion time requirements.

[4] Art. 20 states:

Bell Laboratories and the Union recognize that it is in the best interest of both parties, the employees, and the public that all dealings between them continue to be characterized by mutual responsibility and respect. To insure that this relationship continues and improves, Bell Laboratories and the Union and their respective representatives at all levels will apply the terms of this Agreement fairly in accord with its intent and meaning and consistent with the Union's status as exclusive bargaining representative of all employees in the unit. Each party shall bring to the attention of all employees in the unit, including new hires, their purpose to conduct themselves in a sprit of responsibility and respect and of the measures they have agreed upon to insure adherence to this purpose.

[5] The Charging Party also filed a grievance over the Respondent's contracting out of the work. However, the grievance was ''timed-out'' after the second step of the grievance procedure and pursued no further. The record does not reflect the article under which the grievance was filed.

cle 24.02(b) gave the Respondent the right to subcontract, except in circumstances where the subcontracting directly causes layoffs or reduction in hours of unit employees. Since there was no evidence that the subcontracting either directly or indirectly caused any layoffs or reduction of hours of unit employees, the judge concluded that ''the only condition which could have, even arguably, given rise to a grievance under Article 24, was not fulfilled and the information, even if furnished, would not have made any difference in evaluating whether the grievance had or did not have merit.''

We agree, for the reasons stated by the judge, that the subcontracted work could reasonably be considered unit work and that article 24 did not constitute a waiver of the Union's right to the requested information. We disagree, however, with the judge's finding that the requested information was not relevant to the Union's grievance. In reaching this finding, the judge focused (as does our dissenting colleague) only on article 24.02(b), which limits the Respondent's rights to contract out work if it results in layoffs or the reduction of hours of regular employees who would otherwise have performed the work.

Other contractual provisions, however, must be considered in deciding whether the information sought was relevant to the Union's subcontracting grievance.[6] Article 20 is a broadly written provision which states that the parties will ''apply the terms of the Agreement fairly in accord with its intent and meaning.'' Article 24.02(a) provides that the Respondent, in making decisions about contracting out work, would ''consider carefully the interests of both customers and employees along with all other considerations essential to the management of the business . . . [including] but not limited to law, regulations, changing industry structure, economic conditions and business considerations.'' This language, as the General Counsel contends, can reasonably be interpreted as applying to subcontracting which is not covered by article 24.02(b), i.e., subcontracting which does not result in layoffs or the reduction of hours to unit employees. See *American Telephone and Telegraph*, 309 NLRB 925, 928 (1992).

In sum, the Union could have used the requested information to determine whether the Respondent complied with article 24.02(a).

Our dissenting colleague refuses to consider the applicability of article 24.02(a) because the Union did not explicitly assert the relevance of that provision in its grievance. Such a refusal, however, is inconsistent with a basic tenet of the arbitral process, i.e. that arbitration does not utilize formal pleadings to determine the precise issue or issues to be resolved. See Elkouri and Elkouri, *How Arbitration Works*, Fourth Edition, p. 227. Further, his position is inconsistent with his willingness to rely on his interpretation of article 24.02(b), which also was not explicitly raised in the grievance. Further, our colleague ignores the fact that the grievance itself referred to article 20 and ''any others that may apply.''

The Board uses a broad, discovery-type standard in determining the relevance of an information request, and potential or probable relevance to the filing and processing of grievances is sufficient to give rise to an employer's obligation to provide information. *Island Creek Coal Co.*, 292 NLRB 480, 487 (1989); *Pfizer Inc.*, 268 NLRB 916, 918 (1984), enfd. 763 F.2d 887 (7th Cir. 1985); *Conrock Co.*, 263 NLRB 1293, 1294 (1982). In assessing the relevance of the requested information, the Board does not pass on the merits of the union's grievance that the employer breached the bargaining agreement. *Island Creek Coal Co.*, supra at 487. Rather, ''The Board's only function in such situation is in 'acting upon the probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities.''' *NLRB v. Rockwell-Standard Corp.*, 410 F.2d 953, 957 (6th Cir. 1969), quoting *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967).

Applying these principles, we find that the requested information was relevant to the Union's grievance. As noted above, we agree with the judge that the subcontracted work could reasonably be considered as bargaining unit work. Given this finding, it follows that information pertaining to the subcontracting of possible unit work is relevant and necessary to the Union's function of administering the collective-bargaining agreement and that the information requested is relevant to the grievance filed by the Union. Further, given the broad wording of article 20 and the provisions of article 24.02(a), we find that the dispute is arguably encompassed within those articles and that the Union has a colorable claim that the subcontracting breached these provisions of the collective-bargaining agreement. Concededly, the Respondent may be correct that article 24.02(b) is the only clause that governs subcontracting, and that article 20 and article 24.02(a) provide no basis for attacking the subcontracting involved herein. However, as discussed above, the Board does not judge the merits of the grievance. It judges only whether the requested information is relevant to the grievance. See *W-L Molding Co.*, 272 NLRB 1239, 1240 (1984). Accordingly, we find that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish the Union with the information it sought.

ORDER

The National Labor Relations Board orders that the Respondent, Bell Telephone Laboratories, Inc., Murray

[6] The Union's grievence states on its face that the Respondent violated ''Article 20 and any others that may apply.''

Hill, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to provide the Union, in a timely manner, with requested information which is relevant and necessary to the Union's function of administering the collective-bargaining agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union the information concerning the subcontracting of possible unit work that the Union requested on or about February 2, 1992.

(b) Post at its Murray Hill, New Jersey facility copies of the attached notice marked ''Appendix.''[7] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by a representative of the Respondent, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

MEMBER COHEN dissenting.

At issue in this case is whether the Respondent was required to supply the Union with requested information regarding the Respondent's subcontracting of certain work in December, 1991. Contrary to my colleagues, and like the judge, I would dismiss the complaint.

Essentially, in agreement with the judge, I am not satisfied that the Union, or the General Counsel at trial, established that the information was relevant to any grievance that has been, or could be, filed.

A union's request for information regarding persons or work outside the bargaining unit requires a special demonstration of relevance. *E. I. Dupont & Co.*, 268 NLRB 1031 (1984). The union must show that it has a reasonable basis for requesting the information, and what constitutes a reasonable basis depends on the circumstances of each case. *Southern Nevada Builders Assn.*, 274 NLRB 350, 351 (1985); *San Diego Newspaper Guild 95 v. NLRB*, 548 F.2d 863, 867–868 (9th Cir. 1977). As aptly stated by the court in *San Diego Newspaper*:

> When [the] union asks for information which is not presumptively relevant, the showing by the union must be more than a mere concoction of some general theory which explains how the information would be useful to the union in determining if the employer has committed some unknown contract violation. To hold otherwise would be to give the union unlimited access to any and all data which the employer has.

As the judge found, article 24.02(b) of the parties' contract permits the Respondent to subcontract work so long as that subcontracting does not result in the layoff of unit employees or the conversion of employees to part-time status. There is no contention here that either of these adverse consequences befell employees because of the subcontracting about which the information is sought. Thus, the conditions that could give rise to a grievance under article 24.02(b) do not exist, and the information sought is therefore irrelevant to a grievance under any part of that article. In any event, no grievance is pending or contemplated under article 24[1] Thus, I agree with the judge that the information sought has no relevance to any grievance or potential grievance under any part of article 24.[2]

The General Counsel nonetheless submits, and my colleagues accept, that the information is relevant to the Union's grievance filed under article 20 of the parties' contract. That article provides, in part, that the parties will ''apply the terms of the Agreement fairly in accord with its intent and meaning.'' It is clear that article 20 does not itself grant specific substantive rights. Rather, it is simply a general statement concerning the manner in which other provisions are to be applied. In this regard, my colleagues argue that article 20 provides the basis for construing article 24.02(a). In their view, article 24.02(a), construed in light of article 20, sets forth the factors that are to be considered in situations where, as here, the subcontracting will *not* result in layoff or part-time status. However, whatever merit there might be to this contention of my colleagues, the significant point is that this contention was not the asserted basis for the Union's request for the information.[3] The post hoc argument of my colleagues

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[1] Apparently, the Charging Party filed a grievance over the Respondent's subcontracting but that grievance was ''timed-out'' (i.e. not pursued) after the second step of the grievance procedure.

[2] Contrary to the suggestion of my colleagues, my position in this case does not ''rely upon'' art. 24.02(b). For the reasons set forth above, the judge found, and my colleagues do not disagree, that art. 24.02(b) is irrelevant to the Union's request.

[3] The Union filed its grievance under art. 20 and made no reference to art. 24.02(a). Neither at the time of the events nor at trial did the Union invoke art. 24.02(a).

is no substitute for a union explanation, at the time of the request, of why it needed the information.

My colleagues argue that, under arbitration procedures, the Union was free to make an arbitral argument grounded in article 24.02(a), even though the grievance was filed under article 20 ''and any other that may apply.'' I assume arguendo that this is so. However, this case involves a refusal to provide information. In such cases, where the information is out-of-unit, the union has the burden of informing the employer of the specific need for the information. It is not enough that, years later, one can construct an arbitral argument under which the information could be relevant.

In sum, where, as here, the Union seeks out-of-unit information, it must show the specific basis for its request. The only basis asserted here is the one now given by my colleagues, not the one given by the Union at the time of its request. In these circumstances, I would not find the Respondent guilty of an 8(a)(5) violation.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to supply Local 1060 Communications Workers of America, AFL–CIO, with requested information which is relevant and necessary to the Union's function of administering the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish to the Union the information concerning the subcontracting of possible unit work that the Union requested on or about February 2, 1992.

BELL TELEPHONE LABORATORIES, INC.

Marguerite R. Greenfield Esq., for the General Counsel.
James D. Cutlip, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was tried in Newark, New Jersey, on March 28, 1993. The charge was filed on April 27, 1992, and the complaint was issued on August 31, 1992. In substance, the complaint alleges that the Respondent, since February 3, 1992, has refused to furnish the Union with information regarding the subcontracting of certain work.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Bell Telephone Laboratories is a subsidiary of American Telephone and Telegraph Co. It is engaged in scientific research much of which is related to telecommunications. The facility involved in the present case is located in Murray Hill, New Jersey.

For many years there has existed a collective-bargaining relationship between Bell Labs and the Communications Workers of America (CWA), with which the Charging Party, Local 1061 is affiliated. The most recently executed contract ran for a term from May 28, 1989, to May 30, 1992. The signatories to that contract were Bell and CWA. The unit consists of Bell's nonsupervisory employees in various mechanical and plant service occupations at its facilities located in Murray Hill, Whippany, and Holmedel, New Jersey, and Naperville, Illinois, and at the AT & T research an development locations at Summit, Freehold, Lincroft, and Middletown, New Jersey, and Naperville, Illinois.

The aforesaid contract was negotiated at two levels. At the National level, negotiations took place between AT & T and the CWA. Simultaneously, certain issues were designated by the contracting parties to be handled at the local levels. Typically, national issues involve issues such as wage rates and benefits. An example of a local issue would be contract language relative to the allocation of overtime opportunities. Local issues are dealt with on the Union's side by a CWA International representative in conjunction with the presidents of the four local unions representing employees of Bell Labs.[1] On the employer's side, local issues are dealt with at company divisions and their respective bargaining committees. Bell Labs is considered to be a local division within the AT & T system and Barbara Landmann is the person responsible in leading Bell's side of the local negotiations.

Once a contract has been negotiated, it is administered, at least initially, by shop stewards from the local unions and company line personnel. Indeed at the first two steps of the grievance procedure (art. 16), International representatives of

[1] The four local unions are Local 1060, Local 1061, Local 1062, and Local 4260.

the CWA are excluded. This was established so that local union and company personnel would attempt to resolve disputes at the local level at the earliest possible time. According to Landmann, most disputes are in fact resolved at the first or second step of the grievance procedure and do not require either her involvement, or the intervention of a CWA International representative at the third step. She also testified that at the first two steps of the grievance procedure, information is typically asked for by the local union representatives and given by line supervision. For example, in a discharge case, it would be normal for line supervision to furnish to the local union representative a grievant's disciplinary record.

Since the information sought by Local 1060 relates to an instance of subcontracting, we should first look at what the collective-bargaining agreement has to say on that subject. In pertinent part, article 24 states:

> Section 24.01—Contracting Work
>
> b. Work traditionally performed by bargaining unit members in a work group will not be contracted out if the contracting out will currently and directly cause layoffs or part-timing of regular employees in the same work group which would have otherwise performed the work. ''Work group'' as used in this Article shall be deemed to refer to the group of employees normally treated as a unit for purposes of part-timing or layoff under Article 8.[2]
>
> c. From time to time, but no less frequently than every 6 months, the Bell Laboratories Director, Labor Relations Services and the Union International Representative will meet to review work which has been contracted out which, heretofore, was performed in a given locality by bargaining unit members. The focus of the meetings will be to afford the Union International Representative an opportunity to suggest ways in which Bell Laboratories could, in the future, use bargaining unit members in the same locality to perform the contracted out work at the same or lower total cost to Bell Laboratories and within the same completion time requirements. . . . Where appropriate the Bell Laboratories Director, Labor Relations Services and the Union International Representative will mutually authorizes the formation of local committees to examine the contracted work to suggest ways that the work could be performed in the future, by bargaining unit members.

Local 1060's grievance chairman, Ed Pajak, testified that in late December 1991, he noticed that a concrete floor in building 2 had been refurbished over the weekend. He then learned that this work had not been done by the masons and painters who were part of the bargaining unit and he instructed Bob Burkhardt, a shop steward, to request information from the company and to file a grievance if appropriate.

On or about February 2, 1990, Burkhardt made a request for the following information:

1. A copy of the contract between Bell and the subcontractor.
2. A description of the work done.
3. The scope of the job.
4. The cost of the contract.
5. Copies of all correspondence with the contractor (including names and addresses).

On February 6, 1990, Barbara Landmann, the employer's director of labor relations, sent a letter to Patricia A. Niven, an International representative of the CWA. After acknowledging receipt of the information request by Burkhardt, she stated:

> As I understand our contract . . . it calls for the Company to periodically review with the Union work that has been contracted out. Since data on work contracted out has been provided to you in accordance with this article, it will not be provided on an ad hoc basis.
>
> I would also point out to you that this information is not irrelevant [sic][3] due to the fact that the work performed involved skills and expertise not possessed by members of out bargaining unit. Therefore, it would not be considered work that would normally be performed by this bargaining unit.
>
> We recently provided contract cost information to you in accordance the requirements of Article 24, and as such have met our obligation in that regard.

The work in question involved the resurfacing of a floor in the hall of a building. As done by the contractor, this involved blasting away a portion of the concrete surface, vacuuming the debris, applying an epoxy resin primer, and applying a surface material having a trademark name of Thortex. There was testimony by Youhas, a company engineer, that the process was not one with which bargaining unit employees were familiar or had done before, and that it required at least some specialized skills and equipment. On the other hand, he conceded that the masons and painters who are employed by Bell Labs and who are in the bargaining unit are skilled crafts people who do inhouse construction and maintenance work. For purposes of this case, it is my opinion, that the work in question, which involves construction type activity, could arguably be described as bargaining unit work.[4] Therefore, in the context of a question as to whether article 24 was breached, it seems to me that the Union had a reasonable basis for arguing that the subcontracted work was bargaining unit work as broadly defined.

Local 1060 filed a grievance concerning the Company's refusal to furnish the information. The first step was held on March 25, 1992, and the grievance was denied by the Company. At the third step, Landmann wrote to Niven on August 27, 1992, that:

[2] Art. 8, sec. 8.08 describes a process whereby the Company has agreed to give the Union 28 days' prior notice when it is necessary to have a group of employees go on a part-time schedule. In essence, the parties have agreed to try to resolve any issues resulting from part-timing by mutual agreement if possible.

[3] In context, the word ''irrelevant'' is a typographical error and should have read, ''relevant.''

[4] This does not mean that the argument would prevail before an arbitrator who, given all the facts, might or might not agree with the Company's assertion that the work in question was not the type of work that traditionally was performed by bargaining unit employees.

> The contract provides for the periodic review of data on contracted out work and specifies the frequency, means of requesting and purpose of the reviews. The present case does not conform to the contract procedures nor the intent thereof. The Union, has in the past, made use (properly) of the review provisions of the contract, and cannot now claim to be ignorant of the procedure. We would be happy to continue to comply with the terms of the contract, but insist that the Union follow the prescribed procedures agreed to in the contract.

The grievance is denied.

Concurrently with the grievance concerning the Employer's refusal to furnish the information, Local 1060 also filed a grievance contesting the employer's contracting out of the work in question.

Pajak testified that Local 1060 requested the information because it was, in his opinion, relevant to a potential grievance regarding the company's use of an outside contractor to do work that could have been done by bargaining unit employees; namely, the masons and painters. He testified that the information was necessary ''to find out if in fact we had a grievable item here or not.'' Pajak testified that he wanted a copy of the contract with the subcontractor because he wanted to be able to assess the Company's claim that Bell's employees did not have the right equipment to do the work. He testified that he wanted to know the price of the subcontract in order to determine if the Local's members could do the work at a competitive price. As to the request for correspondence between Bell and the contractor, Pajak testified that he wanted this information so as to ascertain the equipment, materials and skills necessary to perform the work. Finally, Pajak testified that he wanted to information so as to assess whether any of the bargaining unit employees lost overtime opportunities.

It was conceded by Pajak that at the time that the floor was refurbished by the subcontractor, none of the bargaining unit employees who might have done this work, were on layoff status. Moreover, there is no indication that any of them were in part-time status.

III. ANALYSIS

The testimony of Pajak and the evidence as a whole, shows that the only purpose for which Local 1060 sought the subcontracting information was to evaluate whether or not it had a viable grievance pursuant to article 24 of the collective-bargaining agreement. As Pajak stated, the information was necessary ''to find out if in fact we had a grievable item here or not.'' There is no evidence to suggest that the information was sought for the purpose of collective bargaining or for any other legitimate purpose. Accordingly, we must therefore ascertain whether the information was relevant to the purpose for which it was sought; namely, administration of the collective-bargaining agreement.

In *NLRB v. Acme Industrial Co*., 385 U.S. 432 (1967), the Court held that the employer was obligated to furnish information in relation to both pending and potential grievances not merely to bolster the union's case, but also to enable the union to assess the merits of a grievance. Thus, information which would tend to disprove the validity of a grievance would be just as relevant as information which would tend to establish the merits of a grievance. The Court stated:

> When the respondent furnishes the requested information, it may appear that no subcontracting or work transfer has occurred, and accordingly, that the grievances filed are without merit. . . . Far from intruding upon the preserve of the arbitrator, the Board's action was in aid of the arbitration process. Arbitration can function properly only if the grievance procedures leading to it can sift out unmeritorious claims. For if all claims originated as grievances had to be processed through to arbitration, the system would be woefully overburdened.

In *W-L Molding Co*., 272 NLRB 1239, 1240 (1984), the Board concluded that the employer had violated the act by failing to honor a union's request for information regarding subcontracting and transferring of unit work. The Board, although not passing on the merits of the union's grievance claim, stated:

> As the judge noted, a broad discovery-type standard is applicable to requests for information relevant to a union's functions of negotiating and policing compliance with a collective-bargaining agreement. . . . ''[I]t is not the Board's function in this type case to pass on the merits of the Union's claim that Respondent breached the collective bargaining agreement or . . . committed an unfair labor practice.''. . . ''Thus, the union need not demonstrate actual instances of contractual violations before the employer must supply information.''. . . ''Nor must the bargaining agent show that the information which triggered its request is accurate, nonhearsay, or even ultimately reliable.'' . . . ''The Board's only function in such situation is in 'acting upon the probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities.''' [Citations omitted.]

In *Brooklyn Union Gas Co*., 296 NLRB 591 (1989), the union, based on reports that nonbargaining unit employees were being assigned to do bargaining unit work, requested a listing from the company of all management job classifications in each department, a job description for such classification, the number of persons in those jobs, and their names. The Board concluded that the company's refusal to furnish this information was violative of the Act. The administrative law judge noted, however:

> The second category of information requested by the Union concerns work performed by employees outside the bargaining unit. The company is under no statutory obligation to furnish such information unless the information is shown to be relevant to bargainable issues and it can be determined from all the surrounding circumstances, that the Company was informed, or otherwise was aware, of the relevance of the information requested. . . . Furthermore, in assessing the Union's legitimate need for nonunit information, the Union must have more than a mere suspicion that the Company has diverted unit work. It must have an objective and rea-

> sonable basis upon which to conclude that the information is necessary. [Citations omitted.]

In *Southwestern Bell Telephone Co.*, 173 NLRB 172 (1968), the employer had contracted out bargaining unit work from time to time, and the union had attempted, without success to obtain a contract provision limiting the respondent's right to do so. When the union learned of the most recent instances of contracting out, it filed grievances and asked the employer to provide it with information concerning the subcontracting. The employer furnished all the information except information relating to the cost of the subcontracting, contending that this was irrelevant. The union's grievance alleged that the employer violated the recognition clause, the wage rates clause, and a clause which prohibited strikes over other types of subcontracting. At no time did the employer contend that cost was a factor in its decision to subcontract the work in dispute and therefore the Board held that ''it would thus appear that the detailed information requested by the Union would not have made the subcontracting any more or less permissible.''

In my opinion, article 24 would not constitute a waiver of the Union's right to subcontracting information in appropriate circumstances. The fact that article 24(c) provides a procedure for the periodic review of subcontracting information to aid the parties in discussing that topic in general, does not, in my view, amount to an agreement to provide an exclusive forum for the exchange of information if there is a colorable claim that a particular instance of subcontracting has violated the contract.

The ultimate question here is whether the information sought was relevant to a potential grievance under article 24.

Article 24 is a provision giving the Company the right to subcontract; a right which is conditioned only on such subcontracting being a current and direct cause of bargaining unit employees being laid off or put on part-time status. There was no claim or evidence that any bargaining unit employee were laid off or put on part-time status proximate in time to when the subcontracting occurred. There was, in fact, no evidence to show, imply, suggest, or even raise the suspicion that the subcontracting here caused, directly or indirectly, the layoff of any employees or their placement in part-time status.

Therefore, the only condition which could have, even arguably, given rise to a grievance under article 24, was not fulfilled and the information, even if furnished, would not have made any difference in evaluating whether the grievance had or did not have merit.

CONCLUSIONS OF LAW

Having concluded that the information was not relevant for purposes of administering the contract; that being the only purpose for which the information was sought, I shall recommend that the complaint be dismissed.

[Recommended Order omitted from publication.]